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POLICIES OF APARTHEID OF THE GOVERNMENT OF SOUTH AFRICA

Third progress report on the implementation of the Declaration on Apartheid and its Destructive Consequences in Southern Africa

Report of the Secretary-General

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I. INTRODUCTION

1. By its decision 45/457 B of 13 September 1991, and its resolution 46/79 A of 13 December 1991, the General Assembly, inter alia, requested the Secretary-General to promote all efforts leading to the eradication of apartheid through genuine negotiations, to remain actively seized of developments in South Africa and to submit a report on further progress in the implementation of the Declaration on Apartheid and its Destructive Consequences in Southern Africa. The present report is submitted in compliance with that request.

2. To prepare the report, the Secretariat sought the views of the Government, all political parties, movements and organizations, as well as several other interlocutors whom United Nations delegations met in South Africa during 1992. They were requested to transmit by 5 October 1992 their observations on the overall situation in South Africa and on any development regarding the implementation of the Declaration. An analysis based primarily on those views is contained in annex I to the present report.

3. The Secretary-General had the opportunity, on a number of occasions during the year, to discuss, with the Minister for Foreign Affairs of South Africa and the Permanent Representative of South Africa to the United Nations, developments relating to the situation in South Africa, in particular, the negotiation process under way in that country. The Secretary-General also met with the President of the African National Congress (ANC), Mr. Nelson Mandela, the President of the Pan Africanist Congress of Azania (PAC), Mr. Clarence Makwetu, and Chief Mangosuthu Buthelezi, President of the Inkatha Freedom Party (IFP), who provided him with an assessment of the situation and the position of their movements on the developments in South Africa. In addition, the Secretary-General was represented in an observer capacity at the Convention for a Democratic South Africa (CODESA I and II), held, respectively, in December 1991 and May 1992. Further, the Special Representative of the Secretary-General, Mr. Cyrus Vance, also visited South Africa in July 1992 pursuant to Security Council resolution 765 (1992). Mr. Virendra Dayal, Special Envoy of the Secretary-General, visited South Africa in September 1992 to hold follow-up discussions with the relevant parties in connection with the implementation of Security Council resolution 772 (1992).

4. In addition, the Secretary-General drew certain provisions of resolution 46/79 A of 13 December 1992 to the attention of the United Nations organs and specialized agencies concerned. Details on the steps taken by the United Nations system to implement such provisions will be reported in a separate report to the General Assembly.

II. OBSERVATIONS BY THE SECRETARY-GENERAL

5. Despite progress made in the negotiations initiated at CODESA I in December 1991, CODESA II ended in a stalemate as no agreement could be reached on transitional arrangements including the establishment of an interim government. Following the break in the multilateral negotiations, the escalation in political violence further aggravated the situation. The massacre in Boipatong township on 17 June 1992, as well as subsequent incidents of violence, including the tragedy at Bisho, Ciskei, on 7 September 1992, focused attention on the imperative need to put an end to the violence, and to facilitate a peaceful transition to a democratic, non-racial and united South Africa.

6. After the visit to South Africa of my Special Representative, Mr. Cyrus Vance, at the end of July 1992, pursuant to Security Council resolution 765 (1992), I made specific recommendations, 1/ in the context of the resolution, to assist in bringing an effective end to the violence and to create conditions for the resumption of the multilateral negotiations. Subsequently, in its resolution 772 (1992), the Security Council, inter alia, called upon the Government of South Africa and all parties in South Africa to implement urgently the relevant recommendations contained in my report, and authorized me to deploy United Nations observers in South Africa. My Special Envoy, Mr. Virendra Dayal, visited South Africa from 16 to 26 September 1992 to hold follow-up discussions with the parties concerned on the above resolution as well as on recent political developments in the country.

7. At the request of the parties, 10 United Nations observers were deployed in South Africa in the first week of August 1992 to observe mass action organized by ANC. It is generally agreed that the presence of the 10 United Nations observers had an overall salutary effect on the political situation during that period. By the end of October 1992, 44 United Nations observers had been deployed in South Africa in accordance with relevant decisions of the Security Council. They have been well received by the structures established under the National Peace Accord with which they are working in coordination to address effectively the areas of concern noted in my report to the Security Council. 1/ The Government of South Africa, as well as the parties concerned, has welcomed the presence and contribution of the observers to the peace process. The United Nations Observer Mission is proceeding expeditiously to fulfil the mandate entrusted to it, in close cooperation with observers from the Commonwealth and the European Community, as well as the Organization of African Unity (OAU).

8. The meeting between President de Klerk and Mr. Nelson Mandela, President of ANC, on 26 September 1992, constitutes an important step forward towards breaking the CODESA II deadlock. Agreement was reached at the meeting on the key issues relating to the securing of hostels, the release of all remaining political prisoners and the prohibition of the carrying and display of dangerous weapons. Agreement was also reached on the need for a democratic constituent assembly/constitution-making body and constitutional continuity during the interim transitional period. These agreements are a most welcome

development and should provide a basis for moving the negotiation process forward. However, I remain particularly concerned by the rejection of these agreements by Chief Mangosuthu Buthelezi, President of the Inkatha Freedom Party (IFP). Taking these factors into account, I have emphasized to all concerned the need for a renewed and determined effort to put an end to the violence and to remove any remaining obstacles that might impede the resumption of negotiations.

9. The agreement reached between President de Klerk and Mr. Mandela should accelerate the momentum for constructive change and lead to progress on the constitutional front. However, great perils persist, not least in the volatility of the political atmosphere and the tendency to resort to intimidation and violence. It is imperative that political parties honour the commitments they have made as signatories to the National Peace Accord, as well as to the interim agreement reached between the parties on the conduct of public demonstrations based on proposals made by the Goldstone Commission. Here, I should also like to stress once again the responsibility of the South African authorities for the maintenance of law and order, and the need for them to take all measures to end the violence and to protect the rights of all South Africans to engage in peaceful political activity without fear of intimidation or violence. All parties in South Africa should cooperate in combating violence and exercise maximum restraint in order to help break the cycle of violence.

10. The United Nations has been active, through the United Nations High Commissioner for Refugees, through its Trust Funds for Southern Africa and the network of specialized agencies, in facilitating, respectively, the return of South African exiles, the reintegration of former political prisoners into South African society, and in providing educational and training assistance to disadvantaged South Africans. In addition, the United Nations stands ready to provide a concerted system-wide response to address the economic and social disparities resulting from the long practice of institutionalized racism.

11. The role of the international community in the establishment of a democratic, non-racial South Africa, can, of course, only be complementary to those of the various political groups in the country. Their participation, goodwill and political courage are essential for success. Responsibility for achieving a just and long-lasting agreement through negotiation must rest with the South Africans themselves. For its part, the United Nations will continue to seek creative ways to assist the people of South Africa as a whole to attain the goals that they have set for themselves and to which the General Assembly committed itself in its 1989 Declaration on Apartheid and its Destructive Consequences in Southern Africa.

Notes

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ANNEX I

Analysis of the information submitted to the Secretary-General on the implementation of the Declaration on Apartheid and its Destructive Consequences in Southern Africa

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I. PREFACE

1. To facilitate the measurement of progress towards dismantling apartheid, the present report used as a starting-point the situation as it existed in South Africa in September 1991.

2. This report is based on the written submissions provided to the Secretariat by 5 October 1992 by the Government, as well as by a number of political parties and movements and other concerned organizations. 1/ In many cases, these submissions were supplemented by official statements and press releases.

II. PROGRESS MADE TOWARDS CREATING A CLIMATE OF NEGOTIATIONS

A. Release of all political prisoners and detainees

3. In paragraph 6 (a) of the Declaration on Apartheid and its Destructive Consequences in Southern Africa, contained in the annex to General Assembly resolution S-16/1 of 14 December 1989, the Assembly called on the Government of South Africa to "release all political prisoners and detainees unconditionally and refrain from imposing any restrictions on them". Although some 1,000 political prisoners were released in 1991, the release of such prisoners has virtually ceased since the first half of 1992. One year after the deadline agreed in the Pretoria Minute for the release of all political prisoners, the Human Rights Commission (HRC) of South Africa listed some 400 remaining political prisoners. 2/

4. In his report to the Security Council based on the findings of Special Representative Cyrus Vance, 3/ the Secretary-General recommended the immediate release of all remaining political prisoners, thus "creating trust and burying the unhappy past". In response to this recommendation, the Government of South Africa proposed a blanket amnesty for all political crimes committed, whether by the security forces or anti-apartheid forces, before 1990.

5. ANC rejected the proposal and the linkage of amnesty with the issue of political prisoners. It stated that such an amnesty could only be put in place by a non-racial and democratically elected government.

6. On 26 September 1992, following a meeting between President de Klerk and ANC President, Nelson Mandela, the Government of South Africa announced the immediate release of 150 political prisoners. All remaining political prisoners would be released by 15 November 1992. 4/ In its submission for the present report, ANC emphasized that this "must include prisoners who are held in the so-called independent bantustans".

Return of exiles

7. Substantial progress was achieved concerning the return of political exiles, which is seen as another important element in creating conditions for

negotiations. By the end of August 1992, more than 5,236 exiles had returned to South Africa under the auspices of the programme undertaken by the United Nations High Commissioner for Refugees. The National Coordinating Committee for the Repatriation of the Exiles has also arranged for the return of an additional 7,226. 5/

B. Removal of all troops from the townships

8. In paragraph 6 (c) of the Declaration, the General Assembly called upon the Government to "remove all troops from the townships". The Government of South Africa has continued to deploy troops in the townships at the request of the police authorities. Law and Order Minister, Mr. Hernus Kriel, announced at the end of July 1992 that 5,000 police and soldiers would be deployed in Boipatong, Soweto, and other townships. 6/

C. Repeal of all legislation designed to circumscribe political activity

9. In paragraph 6 (d) of the Declaration, the General Assembly called upon the Government to "repeal all legislation, such as the Internal Security Act, designed to circumscribe political activity". Certain provisions of the Internal Security Act have been amended and others left unchanged (see A/45/1052, paras. 50-51). Furthermore, the Government of South Africa has continued to declare unrest areas in a number of townships in accordance with the unaltered Public Safety Act of 1953; 180 such declarations have been made in the past two years, giving the police expanded powers of emergency in those areas. 7/

10. In its submission, ANC stated that there remained on the Statute Book various pieces of security legislation and provisions that restrict the possibilities for free and peaceful political activity. It called, in particular, for the repeal of repressive legislation in the so-called independent homelands.

11. Concern was also expressed by anti-apartheid organizations on the newly adopted "Interception and Monitoring Prohibition Act". According to the Black Sash, this Act allows for Attorney-Generals to empower the police, the South African Defence Force or agents of the National Intelligence Service to intercept mail, tap telephones and bug rooms. 8/

12. One provision of the proposed "Criminal Law Second Amendment Bill", dealing with detention without trial for alleged arms offences was also criticized by anti-apartheid organizations and, in particular, by ANC. 9/

13. The Human Rights Commission of South Africa has expressed concern at the insertion of a clause in the "Police Amendment Act" of February 1992 that confers full police power (including arrest and search) on members of homeland police forces when on "cross-border" operations.

D. Cessation of all political trials and political executions

14. In paragraph 6 (e) of the Declaration, the General Assembly calls on the Government to "cease all political trials and political executions".

15. According to the Human Rights Commission of South Africa, there are still over 130 political trials in progress at present, involving over 2,000 accused. 10/

16. With regard to executions, none has been reported during the period under review. The South African Ministry of Justice announced in March 1992 that it would resume carrying out executions; this decision, however, was reversed following protests from human rights organizations. The Government of South Africa reaffirmed its previous decision to suspend the execution of death sentences pending the outcome of discussions on an interim Bill of Fundamental Rights. 11/ Death sentences, however, are still being handed down, and 23 such sentences were pronounced during the eight months of 1992. The Human Rights Commission of South Africa stated in September 1992 that 304 persons were on death row, of whom 8 were considered political prisoners.

III. OTHER ELEMENTS CONDUCIVE TO FREE POLITICAL DISCUSSION AND TO THE PROCESS OF NEGOTIATIONS

17. In paragraph 7 of the Declaration, the General Assembly lays down as one of the objectives the creation of the "necessary climate in which free political discussion can take place - an essential condition to ensure that the people themselves participate in the process of remaking their country". Three elements have been found to be directly related to the issue of free political discussion and activity: freedom from violence, freedom of assembly and freedom of the press (A/44/960, annex I, para. 87).

A. Creation of an atmosphere free of violence

18. The linkage between an atmosphere free of violence and progress towards negotiations was recognized by the General Assembly in the Declaration, paragraph 8 of which called for negotiations "in an atmosphere which, by mutual agreement between the liberation movements and the South African regime, would be free of violence". The extent of the violence, its causes and initiatives against it were analysed in the second progress report (A/45/1052, paras. 59-68). During the period under review, the escalating violence in South Africa, which is causing heavy losses of human life, its consequences for the negotiating process and its negative impact on the economy remain a cause of grave concern. Reflecting this concern, the submissions received by the Secretariat gave considerable importance to the issue of violence.

19. The National Peace Accord, signed on 14 November 1991, provides a comprehensive framework for ending violence, having been signed, among others, by all the major political parties, trade unions and religious and civic organizations. Besides envisaging mechanisms at the central, regional and local levels, the Accord also contains a code of conduct for political parties and organizations designed to end violence and promote peace and reconstruction. The Accord is based on three main pillars, each of which has a unique function, separate from but complementary to the others:

(a) The National Peace Committee supervises the peace process as set out in the Peace Accord, publicizes it and applies the code of conduct for political parties. Its objectives are to monitor and make recommendations on the implementation of the Peace Accord as a whole and to ensure compliance with the code of conduct for political parties and organizations. Mr. John Hall is Chairman of the Committee.

(b) The Goldstone Commission (Commission of Inquiry regarding the Prevention of Public Violence and Intimidation) investigates the phenomenon of public violence and intimidation and exposes the background to it and the reasons for it. The process is similar to a judicial process and the members of the Commission are jurists. Justice Richard Goldstone is the Chairman.

(c) The National Peace Secretariat has the task, by means of the various dispute resolution committees, of preventing future violence through mediation and facilitation. The function of the National Peace Secretariat is to establish regional dispute resolution committees and to assist the regional committees in the establishment of local dispute resolution committees.

20. Following the adoption of Security Council resolution 772 (1992), the United Nations Observer Mission has been established in South Africa and is working in close cooperation with other observers from the Commonwealth and the European Community, as well as OAU. To date, 44 United Nations observers have been deployed in South Africa to cover the entire country. The United Nations Observer Mission is working in coordination with the structures established under the National Peace Accord.

21. The Human Rights Commission of South Africa reported that while 2,649 people died in political violence during the 12 months prior to the signing of the Accord, more than 3,400 such deaths occurred during the following year. 12/

22. ANC, the Labour Party and other organizations have accused the Government of South Africa of not acting impartially and effectively to put an end to the violence. They also expressed their strong belief that members of the security forces had participated, both through overt and covert means, in acts of violence. ANC, in its submission, stressed that "the climate free of violence visualized in the Declaration has not been realized", and that "the principal responsibility with regard to the maintenance of peace rests with the government of the day".

23. In this context, a number of reports were published during the period under review, criticizing the South African Government's inability to stop the violence and stressing the role played in it by members of the security forces, as well as IFP. Most notable were the report by Amnesty International entitled "South Africa: State of Fear" and that of the International Commission of Jurists entitled "Agenda for Peace".

24. The Goldstone Commission issued in April 1992 its second interim report, in which it stated that it had not received evidence of a "third force" orchestrating the violence, and that "both ANC and IFP have been guilty of many incidents that have resulted in the deaths of, and injuries to, large numbers of people". It also criticized the Government's failure to take firm steps to prevent criminal conduct by members of the security forces and to punish the perpetrators. 13/

25. The Commission has repeatedly recommended banning the carrying of all dangerous weapons in public and securing hostels where inmates have been implicated in acts of violence.

26. At the beginning of 1992, investigators from the International Commission of Jurists concluded after a mission to South Africa that "it would not be possible to hold free and fair elections on a one-person, one-vote basis today in the parts of South Africa" that they had visited.

27. In its submission to this report, the Government of South Africa indicated that "the mass mobilization programme of the ANC/SA Communist Party Alliance has increased tension and that their action was designed "to achieve power through undemocratic means". In its view, the main causes of violence include the power struggle between ANC and Inkatha, the role of the radicals on the extremes, growing unemployment and the availability of weapons.

28. Minister of Law and Order Hernus Kriel announced in August 1992 "sweeping initiatives" aimed at restoring the credibility of the South African police. These measures included the resignation or early retirement of a number of generals and the setting up of a body to investigate crimes allegedly committed by police. 14/

29. In its submission for this report, PAC stated that while "the acknowledgement of the existence of racism is an important first step towards resolving the problem, the steps announced failed to address the real problem"; it added that a genuine "new credible police force can only be brought about by a democratic majority Government". ANC, for its part, described the measures as a "face lift, not a substantial change".

B. Freedom of assembly and freedom of the press

30. During the period under review, no organizations were banned or proscribed. The Government, however, retained the legal authority to control public gatherings under the Internal Security Act.

31. In connection with freedom of the press, a welcome development was the repeal in 1992 of section 27.B of the Police Act of 1958, which had severely curtailed media reporting on actions of the police. While consensus was reached early in 1992 in the first Working Group of CODESA on the need for an independent, neutral body to monitor the broadcasting industry, the status of the South African Broadcasting Corporation remained unchanged.

IV. MATTERS ENHANCING OR OBSTRUCTING THE PROCESS OF ENDING APARTHEID

A. Removal of the pillars of apartheid

32. The repeal in 1991 of the basic laws of apartheid was extensively covered in the second progress report (A/45/1052, paras. 73-85).

33. The Labour Party, in its contribution to the present report, expressed the view that "the remnants of the much-hated Group Areas Act still remain in force". It also points out that racial structures are still in place with regard to local governments and that parliamentary and local by-elections are carried out along racial lines. 15/

34. The Black Sash criticized the new legislation on Provincial and Local Authorities Affairs, which gives further powers to provincial administrators. It also underlined that conscription in South Africa is still limited to white men. 16/

35. In its submission for the present report, ANC stressed the fact that "the fundamental objective visualized in the Declaration, of the transformation of South Africa into a united, democratic and non-racial country, has as yet not been achieved". It added that "South Africa continues to be governed by a white minority regime" and "the overwhelming majority of the people still do not enjoy the right to vote and to be elected into organs of government".

B. Socio-economic inequalities

36. In its submission for this report, the Independent Development Trust stressed that "the steady economic decline in the country is closely related to violence and the uncertainties it engenders". 17/ Indeed the political instability and the economic stagnation in the country are closely interrelated. Political violence continues to remain an obstacle to investor confidence, while declining living conditions and the legacy of decades of apartheid contribute to the weakening of the very structure of South African society, thus making it a fertile ground for violence.

37. The deepening crisis in the fields of labour, education, housing and health remains the focus of intense debate in the country. The views of political parties and other anti-apartheid organizations were dealt with extensively in the two previous reports (A/44/960 and A/45/1052).

38. The Government of South Africa, in its submission for this report, referred to a number of measures that it has taken to deal with socio-economic conditions. In particular, it underlines its commitment to bringing about a single, non-discriminatory educational system with equality in spending. It also mentioned a report issued in May 1992 by the Commission on National Housing, which made recommendations aimed at the consolidation of financial resources for housing. The Government of South Africa indicated that it had allocated R 2.1 billion to the provision of housing in the current financial year.

39. Regarding the issue of health, the Government of South Africa stated that it reinforced, through various initiatives, the emphasis on primary health care services. These initiatives included devolution to local authorities and the allocation of R 38 million for the provision of primary health care clinics. Furthermore, the Government of South Africa provided R 660 million over two years for a nutritional development programme.

40. On the issue of labour, the Government of South Africa referred to a number of measures it had taken in order to implement the recommendations of the ILO Fact-Finding and Conciliation Commission, which visited South Africa in February 1992. Among these measures was the decision to introduce legislation to extend the Basic Conditions of Employment Act to domestic and farm workers. As for the restructuring of the National Manpower Commission, a tripartite Working Group had been established to discuss it.

41. The Government of South Africa expressed the belief that, beyond these measures, the South African economy required an external input to encourage the growth needed to recover from the slowdown caused by the drought and the recession. It called for international assistance to supplement its programmes in the fields of job creation, education, housing and medical facilities.

V. GUIDELINES FOR THE PROCESS OF NEGOTIATIONS

42. The Declaration set out, in paragraph 8, guidelines for the process of negotiations in South Africa. The Declaration considered that the process could begin based on agreements concerning: (a) the mechanism for the drawing up of a new constitution; (b) the role to be played by the international community in ensuring a successful transition to a democratic order; and (c) the necessary arrangements and modalities for the transition, which would include the holding of elections.

43. Following an extensive public debate on the contents of the negotiating process and on the mechanisms for the transition to a democratic, non-racial South Africa, the first session of CODESA was held in December 1991. Substantial progress was achieved in negotiations within the framework of CODESA and in bilateral talks between parties (see A/47/215, A/47/217 and A/47/494).

A. Principles envisaged in a new constitution

44. The consensus reached previously on general constitutional principles was strengthened by the adoption at CODESA I of the Declaration of Intent (see annex II). In this Declaration, participants committed themselves to "bring about an undivided South Africa free from apartheid" and to a number of fundamental constitutional principles. Among these was the principle that the constitution should be the supreme law, guarded over by an independent, non-racial and impartial judiciary. There would be a separation of powers between the legislative, executive and impartial judiciary. South Africa would be a multiparty democracy, in which the basic electoral system would be that of proportional representation. The Declaration also acknowledged the diversity of languages, cultures and religions of the people of South Africa, whose human rights would be entrenched in a Bill of Rights. 18/

45. ANC, in its submission, indicated that "the breakdown experienced at the Second Plenary Session of CODESA in May 1992 emphasizes the point that all parties in these negotiations should commit themselves to the realization of the perspective represented by the constitutional principles contained in the Declaration. Unless they move from such a starting-point and do nothing to subvert these principles, the parties to the negotiations can never reach an agreement which would effectively end the system of apartheid and transform South Africa into a non-racial democracy."

46. According to the Government of South Africa, "the Westminster model, to which ANC attaches such importance, cannot work in our country". Consequently, the Government of South Africa advocates a system based on federal principles along the lines of decentralization and devolution of power to strong regional governments. It acknowledges, however, that regional devolution remains a major policy difference among the parties.

B. Mechanism for the drafting of a new constitution

47. Regarding the mechanism to draw up a new constitution, CODESA II ended in a stalemate due to the failure to resolve the deadlock on the report of Working Group II concerning issues related to the constitution-making process. Since the issues addressed by the five working groups were interrelated (see A/47/215), it was decided that, as a consequence of the disagreement in Working Group II, none of the reports would be tabled at CODESA II. The parties also decided to entrust its Management Committee with the primary responsibility for the resolution of existing differences and to constitute a mechanism which would draft all the legislation required as a result of agreements reached.

48. State President de Klerk and the President of ANC, Mr. Nelson Mandela, met on 26 September 1992 to address the problems of violence and obstacles to negotiations. The Record of Understanding reached at that meeting (see annex III) included, inter alia, agreement that there is a need for a democratic constituent assembly/constitution-making body and that for such a

body to be democratic, it must: (a) be democratically elected; (b) draft and adopt the new constitution, implying that it should sit as a single chamber; (c) be bound only by agreed constitutional principles; (d) have a fixed time-frame; (e) have adequate deadlock-breaking mechanisms; (f) function democratically or arrive at its decisions democratically with certain agreed to majorities; and (g) be elected within an agreed, predetermined time period. 4/

49. The leaders of Bophuthatswana, Ciskei and KwaZulu issued a joint communiqué on 29 September 1992 rejecting the Record of Understanding agreed upon by the Government of South Africa and ANC.

50. In its submission on this issue, PAC reaffirmed its position that an elected constituent assembly was the only democratic mechanism that could draw up the new, non-racial democratic constitution.

C. Arrangements and modalities for the transition to a new democratic order

51. Following the stalemate at CODESA II, transitional arrangements were again considered at the summit meeting on 26 September 1992 between State President de Klerk and ANC President, Mr. Nelson Mandela. The Government and ANC agreed that during the interim/transitional period, there should be constitutional continuity and no constitutional hiatus. In consideration of the principles, they further agreed that: (a) the constitution-making body/constituent assembly shall also act as the interim/transitional Parliament; (b) there shall be an interim/transitional government of national unity; (c) the constitution-making body/constituent assembly cum interim/transitional Parliament and the interim/transitional government of national unity shall function within a constitutional framework/transitional constitution, which shall provide for national and regional government during the period of transition and shall incorporate guaranteed justiciable fundamental rights and freedoms. The interim/transitional Parliament may function as a one or two-chambered body.

52. With regard to the question of transition, the Government of South Africa, in its submission, emphasized its responsibility in continuing to govern the country under the present constitution until it is replaced by a transitional constitution. It also stated that if the transitional constitution had not been replaced by a final constitution within three years, a general election should be held to elect a new transitional Parliament.

53. In its submission for the present report, PAC reiterated its principled commitment to the Declaration adopted at the Patriotic United Front Conference in October 1991. The Declaration calls for a sovereign Interim Government/transitional Authority that shall at the very least control security forces and related matters, the electoral process, State media and define areas of budget and finance, as well as secure international participation.

VI. REVIEW OF THE IMPLEMENTATION OF THE PROGRAMME OF ACTION

54. By adopting the Declaration on Apartheid and its Destructive Consequences in Southern Africa, Member States committed themselves to implementing the Programme of Action in the Declaration. This Programme of Action focused mainly on the following course of action: (a) the international community was to remain seized of the issue of a political resolution of the South African question; (b) it was to step up all-round support for the opponents of apartheid; (c) it was to use concerted and effective measures aimed at applying pressure to bring a speedy end to apartheid and ensure that existing measures were not relaxed until there was clear evidence of profound and irreversible changes, bearing in mind the objectives of the Declaration.

55. In its resolution 46/79 A of 13 December 1991, adopted by consensus, the General Assembly called on the international community to adhere to this Programme of Action.

56. During the period under review, developments in South Africa remained the focus of the attention of the international community, which continued to monitor these developments closely. The international community welcomed the political process that led to the convening of CODESA, which it viewed as a viable forum for bringing together a broad spectrum of representatives of the South African people. It also expressed its concern at the escalation of political violence in the country and urged all concerned to make a renewed effort to reach agreement on transitional arrangements, including the establishment of an interim government.

57. The greater involvement by the international community in facilitating the transition to a new South Africa was emphasized particularly in resolutions 765 (1992) and 772 (1992), adopted unanimously by the Security Council, and in the missions dispatched to South Africa by the Secretary-General. The establishment of the United Nations Observer Mission to South Africa in September 1992 also underlines the increasing role of the international community in the peace process.

58. With respect to the presence of United Nations observers in South Africa, the Government of South Africa, in its contribution to the present report, stated that it "looked forward to building a constructive relationship with the Observer Mission, and with the observers of the European Community, the Organization of African Unity and the Commonwealth". 19/ ANC, for its part, expressed its appreciation for "the speedy and timely intervention of the United Nations Secretary-General and the Security Council to help address the question of violence and other obstacles to the process of negotiations."

59. At a meeting held on 28 April 1992, at Arusha, the OAU Ad Hoc Committee of Heads of State and Government on Southern Africa expressed its satisfaction with the negotiations now in progress within CODESA and urged the liberation movements and all democratic forces to use that forum in accelerating the advent of a non-racial and democratic South Africa. It also stated that the establishment of an interim government and the holding of free and fair

elections would mark the beginning of an irreversible march towards ending apartheid. It appealed to all parties to the National Peace Accord to take every step to put an end to the senseless violence in the townships. 20/ The OAU Council of Ministers, meeting in Dakar, Senegal, in June 1992, discussed the escalating violence in South Africa and called on the Security Council to meet urgently to examine this issue and take all appropriate measures to put an end to the violence and create conditions for the resumption of the negotiations. In accordance with the decision of the Council of Ministers, an OAU fact-finding mission visited South Africa in September 1992. Subsequently, in September 1992, OAU decided to send an observer group to South Africa to work in cooperation with the United Nations Observer Mission.

60. A European Community fact-finding mission visited South Africa in September 1992. It met with representatives of the Government and liberation movements with a view to facilitating the resumption of negotiations. Following this mission, the European Community decided to dispatch some 15 observers to join the other international observers.

61. At its Harare meeting held in October 1991, the Commonwealth Heads of Governments adopted a "programme management approach", linking any change in the application of pressures on South Africa to the undertaking of real and practical steps to end apartheid. In July 1992, the Commonwealth Secretary-General visited South Africa for talks with President de Klerk, ANC President Nelson Mandela and other political leaders. Following this visit, the Commonwealth announced in September 1992 its decision to send a team of observers to South Africa. The observer mission would be aimed at "making a practical contribution to arresting the violence and promoting an environment in which negotiations can be started". 21/ This team will cooperate closely with the United Nations Observer Mission in the implementation of Security Council resolution 772 (1992).

62. During the period under review, the international community and most intergovernmental organizations continued to pledge and to promote assistance to the democratic forces and disadvantaged sectors of the population in South Africa - the European Community, for instance, contributed R 2.6 million to support emergency programmes designed to provide drought-affected rural communities with access to safe and adequate water supplies.

63. The International Labour Organisation Tripartite Conference on Southern Africa, held at Harare in May 1992, decided that assistance programmes on workers' education should be expanded and adapted to the needs of the transition and post-apartheid period. It encouraged maximum support to the non-racial democratic trade union movement through ILO Workers' Educational Activities. It also recommended that assistance programmes should be developed for non-racial, democratic employers' organizations. 22/

64. Regarding the application of pressure on the Government of South Africa, the General Assembly at its forty-sixth session adopted resolution 46/79 A of 13 December 1991 by consensus. The resolution called upon the international community to resume academic, scientific and cultural links with democratic

anti-apartheid organizations and sports links with unified, non-racial sporting organizations of South Africa, as well as to review existing restrictive measures as warranted by positive developments. Following CODESA I and the all-white referendum of March 1992, a number of Governments from various regions of the world considered it appropriate to lift some of their restrictive measures, often going beyond those recommended by the resolution. In its submission for this report, ANC urged the international community to "maintain existing measures against apartheid and only change the status quo in keeping with the resolutions on apartheid adopted by the last General Assembly".

Notes

1/ By 5 October 1992, submissions were received by the Secretariat from the Government of South Africa and from the following political parties, movements and organizations:

The African National Congress (ANC);

The Black Sash;

The Human Rights Commission (HRC);

The Independent Development Trust (IDT);

The Labour Party of South Africa;

The Pan Africanist Congress of Azania (PAC);

South African Chamber of Business (SACOB).

2/ Human Rights Commission of South Africa, Human Rights Update, May 1992.

3/ S/23489.

4/ President F. W. de Klerk and Nelson Mandela, Record of Understanding, 26 September 1992 (see annex III to the present document).

5/ United Nations High Commissioner for Refugees, South Africa Repatriation Operation: Situation Report, Number 26, 24 August 1992; and submission of the Government of South Africa dated 30 September 1992.

6/ Stabilization operation in townships, statement by the Minister of Law and Order, Mr. Hernus Kriel, 29 July 1992.

7/ Human Rights Commission of South Africa, press statement on the creeping state of emergency, 3 August 1992.

Notes (continued)

8/ Submission of the Black Sash, dated 21 September 1992.

9/ Press release of the African National Congress on Anti-Liberties Legislation, 17 June 1992.

10/ Human Rights Commission of South Africa, Summary Report on Repression for the Month of August 1992.

11/ Statement on the death penalty by the Minister of Justice, Mr. Kobie Coetsee, 27 March 1992.

12/ Human Rights Commission of South Africa, statement on the National Peace Accord, 14 September 1992.

13/ Commission of Inquiry Regarding the Prevention of Public Violence and Intimidation, second interim report, April 1992.

14/ Law and Order: New Initiatives, statement by Law and Order Minister, Mr. Hernus Kriel, 27 August 1992.

15/ Submission of the Labour Party, dated 2 September 1992.

16/ Submission of the Black Sash, dated 4 September 1992.

17/ Submission of the Independent Development Trust, dated 16 September 1992.

18/ Convention for a Democratic South Africa (CODESA), Declaration of Intent, 20 December 1991 (see annex II of the present document).

19/ Submission of the Government of South Africa, dated 30 September 1992.

20/ Communiqué of the Organization of African Unity (OAU) Ad Hoc Committee of Heads of State and Government on Southern Africa, eighth session, Arusha, 28 April 1992.

21/ Reuter, 14 September 1992.

22/ Conclusions and Recommendations of the International Labour Organisation Tripartite Conference on Southern Africa, Harare, 5-8 May 1992.

ANNEX II

Declaration of Intent adopted on 20 December 1991 by the participants at the First Meeting of the Convention for a Democratic South Africa

We, the duly authorized representatives of political parties, political organizations, administrations and the South African Government, coming together at this first meeting of the Convention for a Democratic South Africa, mindful of the awesome responsibility that rests on us at this moment in the history of our country, declare our solemn commitment:

1. To bring about an undivided South Africa with one nation sharing a common citizenship, patriotism and loyalty, pursuing amid our diversity, freedom, equality and security for all irrespective of race, colour, sex or creed; a country free from apartheid or any other form of discrimination or domination.

2. To work to heal the divisions of the past, to secure the advancement of all and to establish a free and open society based on democratic values where the dignity, worth and rights of every South African are protected by law.

3. To strive to improve the quality of life of our people through policies that will promote economic growth and human development and ensure equal opportunities and social justice for all South Africans.

4. To create a climate conducive to peaceful constitutional change by eliminating violence, intimidation and destabilization and by promoting free political participation, discussion and debate.

5. To set in motion the process of drawing up and establishing a Constitution that will ensure, inter alia:

(a) That South Africa will be a united, democratic, non-racial and non-sexist State in which sovereign authority is exercised over the whole of its territory;

(b) That the Constitution will be the supreme law and that it will be guarded over by an independent, non-racial and impartial judiciary;

(c) That there will be a multiparty democracy with the right to form and join political parties and with regular elections on the basis of universal adult suffrage on a common voters' roll. In general the basic electoral system shall be that of proportional representation;

(d) That there shall be a separation of powers between the legislature, executive and judiciary with appropriate checks and balances;

(e) That the diversity of languages, cultures and religions of the people of South Africa shall be acknowledged;

(f) That all shall enjoy accepted human rights, freedoms and civil liberties including freedom of religion, speech and assembly, protected by an entrenched and justiciable bill of rights and legal system that guarantees equality of all.

We agree:

1. That the present and future participants shall be entitled to put forward freely to the Convention any proposal consistent with democracy.

2. That CODESA will establish a mechanism whose task it will be, in cooperation with administrations and the South African Government, to draft the texts of all legislation required to give effect to the agreements reached in CODESA.

We, the representatives of political parties, political organizations and administrations, further solemnly commit ourselves to be bound by the agreements of CODESA and in good faith to take all such steps as are within our power and authority to realize their implementation.

[Signed] African National Congress; Ciskei Government; Democratic Party; Dikwankwetla Party; Inyandza National Movement; Intando Yesizwe Party; Labour Party of South Africa; Natal/Transvaal Indian Congress; National Party; National People's Party; Solidarity; South African Communist Party; Transkei Government; United People's Front; Venda Government; Ximoko Progressive Party

We, the South African Government declare ourselves to be bound by agreements we reach together with other participants in CODESA in accordance with the standing rules and hereby commit ourselves to the implementation thereof within our capacity, powers and authority.

[Signed] South African Government

ANNEX III

Joint Statement and Record of Understanding:
President Frederik W. de Klerk and ANC
President, Mr. Nelson Mandela,
26 September 1992

MEETING BETWEEN THE STATE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND THE PRESIDENT OF THE AFRICAN NATIONAL CONGRESS, HELD AT THE WORLD TRADE CENTRE ON 26 SEPTEMBER 1992

1. The attached Record of Understanding was agreed to.

2. On the way forward -

- The two delegations agreed that this summit has laid a basis for the resumption of the negotiation process.

- To this end the ANC delegation advised the South African Government that it would recommend to its National Executive Committee that the process of negotiation be resumed, whereafter extensive bilateral discussions will be held.

- It was agreed that the practicalities with regard to bilateral discussions will be dealt with through the existing channel.

RECORD OF UNDERSTANDING

1. Since 21 August 1992 a series of meetings has been held between Mr. Roelf Meyer, Minister of Constitutional Development and Mr. Cyril Ramaphosa, Secretary General of the African National Congress. These meetings entailed discussions with a view to removing obstacles towards the resumption of negotiations and focused on the identification of steps to be taken to address issues raised in earlier memoranda. The discussions took note of various opposing viewpoints on the relevant issues and obstacles. It was decided that these issues should not be dealt with exhaustively in the understanding. This document reflects the understanding reached at the conclusion of the discussions regarding these obstacles and issues.

2. The understandings on issues and obstacles included the following, although it was observed that there are still other important matters that will receive attention during the process of negotiation:

(a) The Government and ANC agreed that there was a need for a democratic constituent assembly/constitution-making body and that for such a body to be democratic it must:

- Be democratically elected;

- Draft and adopt the new constitution, implying that it should sit as a single chamber;

- Be bound only by agreed constitutional principles;

- Have a fixed time-frame;

- Have adequate deadlock-breaking mechanisms;

- Function democratically, i.e., arrive at its decisions democratically with certain agreed-to majorities;

- Be elected within an agreed predetermined time period.

Within the framework of these principles, details would have to be worked out in the negotiation process.

(b) The Government and ANC agreed that during the interim/transitional period there shall be constitutional continuity and no constitutional hiatus. In consideration of this principle, it was further agreed that:

- The constitution-making body/constituent assembly shall also act as the interim/transitional Parliament;

- There shall be an interim/transitional Government of national unity;

- The constitution-making body/constituent assembly cum interim/transitional Parliament and the interim/transitional Government of national unity shall function within a constitutional framework/transitional constitution which shall provide for national and regional Government during the period of transition and shall incorporate guaranteed justiciable fundamental rights and freedoms. The interim/transitional Parliament may function as a one- or two-chambered body.

(c) The two parties are agreed that all prisoners whose imprisonment is related to political conflict of the past and whose release can make a contribution to reconciliation should be released. The Government and ANC agreed that the release of prisoners, namely, those who according to ANC fall within the guidelines defining political offences, but according to the Government do not, and who have committed offences with a political motive on or before 8 October 1990 shall be carried out in stages (as reflected in a separate document: Implementation Programme: Release of Prisoners) and completed before 15 November 1992. To this end, the parties have commenced a process of identification. It is the Government's position that all who have committed similar offences but who have not been charged and sentenced should be dealt with on the same basis. On this question, no understanding could be reached as yet and it was agreed that the matter would receive further attention.

As the process of identification proceeds, releases shall be effected in the above-mentioned staged manner. Should it be found that the current executive powers of the State do not enable it to give effect to specific releases arising from the above identification, the necessary legislation shall be enacted.

(d) The Goldstone Commission has given further attention to hostels, and brought out an urgent report on certain matters and developments in this regard. The Commission indicated that the problem is one of criminality and that it will have to investigate which localities are affected.

In the meantime some problematic hostels have been identified and the Government has undertaken as a matter of urgency to address and deal with the problem in relation to those hostels that have been associated with violence. Further measures will be taken, including fencing and policing to prevent criminality by hostel dwellers and to protect hostel dwellers against external aggression. A separate document (Implementation Programme: Hostels) records the identification of such hostels and the security measures to be taken in these instances.

Progress will be reported to the Goldstone Commission and the National Peace Secretariat. United Nations observers may witness the progress in cooperation with the Goldstone Commission and the National Peace Secretariat.

(e) In the present volatile atmosphere of violence, the public display and carrying of dangerous weapons provokes further tension and should be prohibited. The Government has informed ANC that it will issue a proclamation within weeks to prohibit country-wide the carrying and display of dangerous weapons at all public occasions subject to exemptions based on guidelines being prepared by the Goldstone Commission. The granting of exemptions shall be entrusted to one or more retired judges. On this basis, the terms of the proclamation and mechanism for exemption shall be prepared with the assistance of the Goldstone Commission.

(f) The Government acknowledges the right of all parties and organizations to participate in peaceful mass action in accordance with the provisions of the National Peace Accord and the Goldstone Commission's recommendations. ANC, for its part, reaffirms its commitment to the provisions of the Code of Conduct for Political Parties arrived at under the National Peace Accord and the agreement reached on 16 July 1992 under the auspices of the Goldstone Commission as important instruments to ensure democratic political activity in a climate of free political participation. The two parties also commit themselves to the strengthening of the Peace Accord process, to do everything in their power to calm down tensions and to finding ways and means of promoting reconciliation in South Africa.

In view of the progress made at this summit and the progress we are likely to make when negotiations are resumed, ANC expressed its intention to consult its constituency on a basis of urgency with a view to examining the current programme of mass action.

3. The two parties agreed to hold further meetings in order to address and finalize the following matters which were not completed at the summit:

(a) Climate of free political activity;

(b) Repressive/security legislation;

(c) Covert operations and special forces;

(d) Violence.

Agreed to at Johannesburg on 26 September 1992:

F. W. de Klerk
State President

N. R. Mandela
President, ANC